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Attorneys for Plaintiff
HERMAN MILLER, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

HERMAN MILLER, INC..

Case No: 2:17-cv-04279 JAK-SP

Plaintiff,

**[PROPOSED]
PROTECTIVE ORDER**

V.

BLUMENTHAL DISTRIBUTING, INC.
d/b/a OFFICE STAR PRODUCTS;
JORNG WELL INDUSTRIAL CO., LTD.;
NOVA ASIA INT'L INC.; NOVA
INNOVATIONS INT'L LTD.; and
KING HONG INDUSTRIAL CO., LTD.,

Defendants.

1 **WHEREAS**, in the course of this litigation disclosure will be sought of information
2 which a party or third party regards as being of a confidential and/or proprietary nature,
3 including, but not limited to, financial and other business information; and

4 **WHEREAS**, there is a need to establish a mechanism to protect the disclosure of
5 such confidential or proprietary information in this action;

6 **GOOD CAUSE HAVING BEEN SHOWN;**

7 **IT IS HEREBY ORDERED** that the following protective order shall govern the
8 disclosure of confidential and/or proprietary information provided in discovery in this
9 action by any party or third party.

10 **I. DEFINITIONS.**

11 The following definitions apply in this protective order:

12 A. The designation “CONFIDENTIAL” can be applied by a party or third party
13 to any type of information which that party or third party believes in good faith to
14 constitute, contain, reveal or reflect proprietary or confidential financial, business,
15 personnel or related information. The designation made by a party or non-party shall be a
16 certification to the Court and to the other parties that such information is believed to
17 earnestly be Confidential within the meaning of this Stipulated Protective Order. All
18 involved in making such designation shall act in good faith, and such designation shall not
19 be made to impose burden or delay on an opposing party, for tactical or other advantage in
20 litigation, or in order to avoid embarrassment. Information designated as “Confidential”
21 in accordance with this provision shall be treated as Confidential Information until it ceases
22 to be covered by this Stipulated Protective Order.

23 B. The designation “CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” can be
24 applied by a party or third party to any type of information which it believes in good faith
25 to constitute, contain, reveal or reflect proprietary or confidential, financial, business,
26 personnel or related information which is so highly sensitive and confidential as to require
27 the possession of such information to be limited to the counsel of record and their agents
28 only. Trade secret information qualifies as Confidential – Attorneys Eyes Only

1 information. This designation shall be made as sparingly as possible and shall be a
2 certification to the Court and the other parties that such information is believed subject to
3 this more restrictive classification within the meaning of this Stipulated Protective Order.
4

5 C. "Confidential Information" refers to all information which is subject to the
6 designations "CONFIDENTIAL," or "CONFIDENTIAL -- ATTORNEYS' EYES
7 ONLY" as described above.
8

9 D. "Party" means every party to this action and every director, officer, employee,
10 and managing agent of every party to this action.
11

12 E. "Third Party" means every person or entity not a party to this action that
13 provides information, either testimonial or documentary, for use in this litigation through
14 discovery or otherwise.
15

16 F. "Order" means this Protective Order.
17

18 II. **TERMS OF THE PROTECTIVE ORDER.** 19

20 A. **Materials Subject to Designation.** 21

22 All depositions, originals or copies of transcripts of depositions, exhibits, answers to
23 interrogatories and requests for admissions; and all documents, materials, tangible things
24 and information obtained by inspection of files or facilities, by production of documents or
25 by identification of documents previously gathered (hereinafter collectively referred to as
26 "Information") can be designated by the party or a nonparty producing the Information
27 subject to with the definitions set forth above.
28

B. **Treatment of "Confidential -- Attorneys Only" Information.** 29

30 Except as provided in Paragraphs D, E and O below, information designated as
31 "CONFIDENTIAL -- ATTORNEYS' EYES ONLY" and all information derived
32 therefrom (excluding such information as is derived lawfully from an independent source)
33 shall not be disclosed, given, shown, made available or communicated in any way to any
34 person or entity other than counsel of record for a party. Such information shall be used
35 only for the purposes of this litigation, and shall not directly or indirectly be used for any
36 business, financial or other purpose whatsoever.
37

1 C. **Treatment of “Confidential” Information.**

2 Except as provided in Paragraphs D, E and O below, documents designated as
3 “CONFIDENTIAL” and all information derived therefrom (excluding such information as
4 is derived lawfully from an independent source) shall not be disclosed, given, shown, made
5 available, or communicated in any way to any person or entity other than counsel of record
6 for a party, the parties to this action and their current employees, and third-party witnesses
7 who counsel of record for a party believe have knowledge which would be reasonably
8 calculated to lead to the discovery of admissible evidence. Before disclosure to any person
9 or entity other than counsel of record for a party, the person to whom such information is
10 to be disclosed shall execute and deliver to the attorney of record making the disclosure a
11 written agreement in the form attached hereto as Exhibit A. Such information shall be used
12 only for the purposes of this litigation, and shall not directly or indirectly be used for any
13 business, financial or other purpose whatsoever.

14 D. **Outside Experts and Consultants.**

15 Documents designated as “CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” and
16 “CONFIDENTIAL” can also be shown to outside experts or consultants, together with
17 their clerical personnel, who are retained by a party in connection with the preparation for
18 trial or trial in this action, provided that before disclosure to any such expert or consultant,
19 the person to whom such information is to be disclosed shall execute a written agreement
20 in the form attached hereto as Exhibit A. The foregoing notwithstanding, any such expert
21 or consultant who is an employee of a competitor of any of the parties shall not be shown
22 or otherwise given access to documents or information designated “CONFIDENTIAL” or
23 “CONFIDENTIAL -- ATTORNEYS’ EYES ONLY,” and any such expert or consultant
24 who is an employee of any of the parties shall not be shown or otherwise given access to
25 documents or information designated “CONFIDENTIAL -- ATTORNEYS’ EYES
26 ONLY.”

27 E. **Request for Additional Disclosure.**

28 If any counsel of record desires to give, show, make available or communicate to

any person apart from those permitted under Paragraphs B, C, and D any information
designated as “CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” or
“CONFIDENTIAL,” that counsel of record shall first obtain the written consent of the
designating party through such party’s counsel of record or obtain leave of Court to do so.
Each person to whom the Confidential Information is to be given, shown, made available
or communicated must execute a written confidentiality agreement, in the form attached
hereto as Exhibit A. Only after all of the foregoing conditions have been fully satisfied
may the Confidential Information be given, shown, made available or communicated to
any person other than those permitted under Paragraphs B, C, and D.

F. Record of Disclosure.

A file shall be maintained by the counsel of record making a disclosure to third
parties of all written agreements signed by persons to whom materials designated as
“CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” have been
given. A copy of each such agreement shall be sent to Counsel of Record for the
designating party within five (5) days of disclosure, and said file shall be made available
for inspection and copying by opposing counsel upon written request.

1 **G. Manner of Designating Documents.**

2 A party shall designate documents containing Confidential Information by placing a
3 legend in plain view on each page of any document that party wishes to protect against
4 disclosure or use. This legend shall state “CONFIDENTIAL -- ATTORNEYS’ EYES
5 ONLY,” or “CONFIDENTIAL,” as appropriate. A designation of Confidential
6 Information as to anything of which inspection or sample has been requested shall be made
7 by placing a “CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL”
8 legend on the thing or container within which it is stored, or by some other means of
9 designation agreed upon by the parties. All documents and things shall be marked prior to
10 the provision of a physical copy thereof to the other party. Alternatively, documents may
11 be made available for an initial inspection by counsel for the requesting (receiving) party
12 prior to the furnishing party producing copies of selected items. In such cases, documents
13 shall be inspected only by counsel for the receiving party permitted access to anything
14 designated “CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL”
15 pursuant to the terms of this Order, prior to furnishing copies to the receiving party. Such
16 initial inspection shall not constitute waiver of confidentiality with respect to any document
17 so inspected.

18 **H. Initial Failure to Designate Information.**

19 The initial failure to designate Information “CONFIDENTIAL -- ATTORNEYS’
20 EYES ONLY” or “CONFIDENTIAL” in accordance with this Order shall not preclude
21 any party, at a later date, from so designating the documents and to require such documents
22 to be treated in accord with such designation from that time forward. If such Information
23 has previously been disclosed to persons no longer qualified after such designation, the
24 disclosing party shall take reasonable efforts to obtain all such previously disclosed
25 Information, advise such persons of the claim of confidentiality, and have such persons
26 execute written confidentiality agreements in the form attached hereto as Exhibit A. With
27 respect to any documents produced to date by either party or any depositions that have been
28 taken to date, either party has until 30 days after the entry of this Order in which to

1 designate all or part of any such document or deposition as containing "CONFIDENTIAL
2 -- ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" information.

3 **I. Manner of Designating Depositions.**

4 In the case of a deposition, counsel for such party may, at the commencement of
5 such deposition, temporarily designate the entire deposition as "CONFIDENTIAL,"
6 provided, however, that where such an initial designation has been made, the designating
7 party, within fifteen (15) days after receipt of the transcript, shall mark as
8 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" those pages
9 of the transcript as such party shall then deem confidential, (the confidential designation of
10 all remaining pages being rescinded after such period), and shall notify the other party in
11 writing which pages are deemed Confidential Information. In the event that such notice is
12 not sent within said fifteen (15) days of the receipt of the transcript, no portion of the
13 deposition shall thereafter be confidential unless the designating party thereafter notifies
14 the other party that the failure to timely designate occurred by oversight.

15 **J. Court Reporters.**

16 Any court reporter who reports the testimony in this action at a deposition shall
17 agree, before reporting any such testimony involving Confidential Information, that all
18 Confidential Information is and shall remain confidential and shall not be disclosed except
19 to the attorneys of record and any other person who is present while such testimony is being
20 given; that copies of any transcript, reporter's notes or any other transcription records of
21 any such testimony shall be retained in absolute confidentiality and safekeeping by such
22 reporter or shall be delivered to the attorney of record for the designating party or to the
23 Court subject to the provisions hereof.

24 **K. Filing Documents With The Court.**

25 When information designated as Confidential Information is filed or lodged with the
26 court, or any pleading or memorandum purports to reproduce or paraphrase such
27 information, the materials to be filed or lodged must be accompanied by an application to
28 file under seal in accordance with Local Rule 79-5.1..

Upon default of the filing or lodging party properly to designate Confidential Information and file or lodge such information in accordance with this Order, any party who in good faith believes that designation and filing under seal is required may do so within five (5) days of learning of the defective filing or lodging. Notice of such designation shall be given to all parties. Nothing in this provision relieves a party of liability for damages caused by failure to properly file such information under seal.

L. No Effect On Party's Own Use.

Nothing contained in this Order shall affect the right of a party to disclose or to use as it desires any information designated and produced by itself as "CONFIDENTIAL -- ATTORNEYS' EYES ONLY" or "CONFIDENTIAL."

M. No Effect On Disclosure to Author or Addressees.

Nothing contained in this Order shall affect the right of a party to disclose any information designated as "CONFIDENTIAL -- ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" to the author or addressees of the document.

N. No Applicability to Public Information.

The restrictions on dissemination of confidential information shall not apply to (i) information which prior to disclosure hereunder is either in the possession or knowledge of an inspecting party or person who, absent this order, is under no restriction regarding its dissemination, or (ii) information which is public knowledge or which after disclosure, becomes public knowledge other than through an act or omission of a party receiving the confidential information.

O. No Applicability to the Court or Court Personnel.

The restrictions in this Order on receipt or dissemination of confidential information shall not apply to the Court or to Court personnel.

P. Legal Effect of Designations.

The designation by a party of any document, material or information as "CONFIDENTIAL -- ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" is intended solely to facilitate discovery in this action, and neither such designation nor treatment in

1 conformity with such designation shall be construed in any way as an admission or
2 agreement by any party that the designated disclosure constitutes or contains confidential
3 information. This Order shall not prejudice the right of any party to bring before the Court
4 a motion seeking a declaration that information produced by the other party has been
5 wrongfully designated as Confidential Information and should not be subject to the terms
6 of this Order, provided.. A party bringing such motion shall have the burden of proving
7 that the information designated as Confidential Information is in the public domain or was
8 in possession of the receiving party prior to its disclosure through discovery in this action,
9 or is otherwise not appropriately designated as Confidential Information. Failure to so
10 designate any document or thing shall not constitute a waiver of any claim by a party that
11 such documents or things do contain proprietary information, and/or confidential
12 information. The procedure for resolving any dispute as to the propriety of confidentiality
13 designations, including any motion practice, shall be governed by Local Rule 37.

14 **Q. Final Disposition of Action.**

15 Within 60 days after the final disposition of this action, including appeals, each
16 counsel of record shall, upon the request of a party: (a) promptly return to counsel of record
17 for the designating party all information designated “CONFIDENTIAL -- ATTORNEYS’
18 EYES ONLY” or “CONFIDENTIAL” and all copies made thereof which are not in
19 custody of the Court; or (b) promptly destroy or see to the destruction of all writings related
20 thereto, and certify to the designating party that such destruction has been done. As an
21 exception to the above, counsel of record may retain a single file copy of any document
22 filed with the Court, a copy of any written discovery response, and a transcript of any
23 deposition testimony, together with all exhibits thereto. The copy of these retained
24 documents shall be treated as “CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” and
25 counsel of record shall immediately notify opposing counsel of record of any attempt by
26 third parties to inspect and/or copy said documents.

27 **R. Motion For Relief From Designation.**

28 If, subsequent to a party’s receipt of information designated “CONFIDENTIAL --

1 ATTORNEYS' EYES ONLY" or "CONFIDENTIAL," it shall appear to such party that
2 any such information is not of a nature warranting the protection afforded hereunder, such
3 party shall first notify counsel for the designating party in writing, specifically identifying
4 the documents sought to be de-designated and the bases for the proposed de-designations.
5 If the parties cannot resolve the issue, they shall follow the procedures set forth in Local
6 Rule 37 for resolution of discovery disputes.

7 The producing party bears the burden of proof that any designated material meets
8 the requirements for such designation. The material shall in all respects be treated as
9 Confidential Information from the time of original designation until the Court has
determined the issue.

10 **S. Modification of Order.**

11 This Order shall not prevent any of the parties from applying to the Court for relief
12 therefrom, or from applying to the Court for further or additional Protective Orders, or from
13 agreeing between themselves to modification of this Protective Order, subject to the
14 approval of the Court.

15 **T. Survival of Terms.**

16 Absent written modification hereof by the parties hereto or further order of the Court,
17 the provisions of this Order that restrict the disclosure and use of confidential Information
18 shall survive the final disposition of this action and continue to be binding on all persons
19 subject to the terms of this Order.

20 **U. Submitting to Jurisdiction of the Court.**

21 Each person to whom disclosure of any designated Information is made shall be
22 subject to and hereby submits to the jurisdiction of the United States District Court for the
23 Central District of California for the purpose of contempt proceedings in the event of any
24 violation of this Order.

25 **V. Violation of Order.**

26 In the event anyone shall violate or threaten to violate any term of this Order, the
27 parties agree that the aggrieved party may immediately apply to obtain injunctive relief

against any such person violating or threatening to violate any of the terms of this Order and, in the event the aggrieved party shall do so, the respondent person subject to the provisions of this Order shall not employ as a defense thereto the claim that the aggrieved party possesses an adequate remedy of law. The parties and any other person subject to the terms of this Order agree that this Court has jurisdiction over such person or party for the purpose of enforcing this Order. In the event that any confidential information is disclosed by a receiving party in violation of this order, the confidential information shall not lose its status through such disclosure, and the parties shall take all steps reasonably required to assure its continued confidentiality.

W. Subpoena in Another Action.

Nothing in this order shall be construed as authorizing a party to disobey a lawful subpoena issued in another action.

X. Claw Back Of Privileged Materials

In the event that a producing party discovers that it has inadvertently produced material that is subject to a claim of attorney-client privilege or attorney work product privilege, it will promptly notify the receiving party and the receiving party shall return the material and destroy any copies. If the receiving party has a good faith belief that the materials are not privileged, it must file a motion within five (5) days of the demand from the producing party. Pending resolution of any such motion, the receiving party shall isolate the materials in question and prevent their disclosure to anyone else.

If a receiving party discovers a document that clearly appears on its face to constitute attorney-client privileged information or privileged attorney work product of the producing party, the receiving party will promptly notify the producing party, and thereafter the same procedure shall apply as above.

Y. Treatment of Confidential Information at Trial.

Once a case proceeds to trial, all of the information that was designated as confidential or maintained pursuant to this protective order becomes public and will be presumptively available to all members of the public, including the press, unless

1 compelling reasons supported by specific factual findings to proceed otherwise are made
2 to the trial judge in advance of the trial. *See Kamakana v. City and County of Honolulu*,
3 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing
4 documents produced in discovery from “compelling reasons” standard when merits-related
5 documents are part of court record). Accordingly, the terms of this protective order do not
6 extend beyond the commencement of the trial, and the owners of Confidential Information
7 must seek further protection from the Court.

8 DATED: January 26, 2017



9
10 SHERI PYM

11 UNITED STATES MAGISTRATE JUDGE

EXHIBIT A
NON-DISCLOSURE AGREEMENT

I, _____, declare under penalty of perjury that:

1. My address is _____.
 2. My present employer is _____.
 3. My present occupation or job description is _____.

I HEREBY CERTIFY AND AGREE that I have read and understand the terms of the Protective Order (“Order”) in the matter of *Blumenthal Distributing, Inc. v. Herman Miller, Inc., et al.*, in the United States District Court, Central District of California, Civil Action No. 5:14-cv-01926-JAK-SPx that I will not use or disclose to anyone any of the contents of any Confidential Information received under the protection of the Order, and agree to be bound by the terms and conditions of the Order.

I understand that I am to retain all copies of any of the materials that I receive which have been so designated as Confidential Information in a container, cabinet, drawer, room or other safe place, and that all copies are to remain in my custody until I have completed my assigned or legal duties, whereupon the copies are to be returned or destroyed as specified in the Order. I acknowledge that such return or the subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed upon me by the Order.

Dated: _____ Signed: _____

(print name)